MEMORANDUM

TO: Airport Board
FROM: Patrick Dame, C.M., Executive Director
DATE: February 8, 2022
RE: Lease and Use Agreement with Federal Express

The Lease and Use Agreement with Federal Express for a storage area is attached for a term of December 1, 2021, through May 31, 2022. The agreement has been reviewed by the City Attorney’s office and is recommended for approval.

STAFF RECOMMENDATION: Staff recommends Board approval of the Lease and Use Agreement with Federal Express for a storage area.
This Lease Agreement (the “Agreement”) is made and entered into as of December 1, 2021 between the City of Rapid City, a municipal corporation, by and through the Rapid City Regional Airport Board, hereinafter collectively called Lessor, and Federal Express Corporation, a Delaware corporation, hereinafter called Lessee.

ARTICLE I
STORAGE AREA

A. Facilities Leased. Lessor agrees that for the monthly rentals paid as herein provided, Lessee shall have exclusive use of certain exclusive conditioned ground storage at the Rapid City Regional Airport’s (the “Airport”) Maintenance shop located at 4053 Lacroix Court, Rapid City, SD, hereinafter called the “Storage Area.” The Storage Area consists of 840 square feet.

B. Use. The Lessee agrees that the Storage Area shall be used only for purposes in connection with and incidental to storing ground service equipment and other miscellaneous supplies and for no other purpose.

ARTICLE II
TERM

A. Term. This Agreement shall be for a period of six (6) months commencing on December 1, 2021, and expiring on May 31, 2022 (“Original Term”).

B. Expiration, Holding Over. Upon the termination of this Agreement or the expiration of the Original Term hereof, Lessee agrees to immediately remove all fixtures belonging to Lessee and surrender the Storage Area to Lessor. If Lessee shall fail to remove its property as herein provided, Lessor may effect such removal at Lessee’s expense. If Lessee should hold over and remain in possession of the Storage Area after the expiration of the Original Term provided by this Agreement, such holding over shall be on the same terms and conditions as herein provided but Lessee shall hold at the sufferance of Lessor, subject to eviction at any time.

ARTICLE III
RENTAL AND FEE

A. Fees, Charges and Rental. As consideration for the Storage Area, Lessee shall pay Lessor as per the Airport’s published Rates and Charges for Exclusive Conditioned Ground Storage. For the Original Term, the rate is: Five Dollars and Seventy-Seven Cents ($5.77) per square foot per annum.

B. Rents shall be paid monthly by the tenth day of the current month for each month’s payment. The total amount due for the Original Term is $2,423.40 or $403.90 each month:
Monthly:  Four Hundred Three and 90/100------------------------Dollars ($403.90)

C. Payment of rents and all other charges shall be delinquent if not paid prior to the tenth (10th) day of the month in which they are due. Late or unpaid rents and charges will bear a fee of equal to the Lessor’s then current Rates and Charges.

D. Payment of rents and all other charges will be in legal tender and submitted to the Rapid City Regional Airport Administration Office, 4450 Terminal Road, Suite 102, Rapid City, South Dakota, 57703-8706.

ARTICLE IV
CONDUCT OF BUSINESS

A. Total Lease Rental. Lessee understands and agrees that the lease rents and other charges herein provided for shall be the total lease rental due Lessor for the Storage Area.

B. First Class Operations. Lessee shall maintain its Storage Area in a neat, orderly, and safe condition at all times.

C. Utilities. Lessor shall provide heating and ventilation to Lessee’s Storage Area, and shall provide electrical service for the leased space. No other utilities are provided by the Lessor.

D. Laws and Regulations. Lessee, its employees, agents, and servants, shall at all times comply with the laws and regulations of the United States of America and the State of South Dakota and all applicable ordinances, codes, regulations and Primary Guiding Documents governing the operation of the Airport.

E. Signs. Lessee shall install only such signs as are approved by the Rapid City Regional Airport Board, and in accordance with standard specifications adopted in ordinance form or regulation by the City of Rapid City.

F. Assignment and Subletting. Lessee shall not assign this Agreement, sublet this agreement or any part thereof, or sublet any space or premises occupied hereunder, or any part thereof, without the prior written consent of Lessor, such consent not to be unreasonably withheld.

G. Inspection Rights. So long as there is no unreasonable interference with Lessee’s use of the Storage Area as authorized under this Agreement, the Airport Executive Director or his designated representative shall have at all times the full and unrestricted right to enter the Storage Area for the purpose of inspecting or protecting such areas and of doing any and all things which Lessor is obligated to do as set forth herein or which may be deemed necessary for the proper general conduct and operation of the Airport in the exercise of police power of the City of Rapid City.
H. **General Control of Airport.** The Airport Executive Director or his designated representative shall at all times have the right to reasonably control all activities of the Lessee, Lessee’s agents, employees, patrons, guests and vendors relative to their use of the buildings, parking lots, driveways, roadways, aircraft maneuvering areas, and other public facilities. The Lessee agrees to abide by any and all rules reasonably adopted during the term of this Agreement by the City or Airport Board in exercise of their duties. It is further understood that Lessor shall have the control to restrict access of and to include banning from the Airport, Lessee’s agents, employees, patrons, guests and vendors for failure to comply with laws, regulations, ordinances, codes, and airport rules on airport property.

I. **Quiet Enjoyment.** Lessor agrees that, on payment of rent and performance of the covenants, conditions, and agreements on the part of Lessee to be performed hereunder, Lessee will have the right to peaceably occupy and enjoy the Storage Area.

**ARTICLE V**
CONSTRUCTION AND MAINTENANCE OF THE STORAGE AREA

A. **Construction.** No planned construction, i.e. structural, pavement, signage, landscaping, etc. shall be done to the Storage Area.

B. **Refuse.** Trash and other wastes shall be properly removed or disposed of by the Lessee, at the Lessee’s sole expense using facilities provided by the Lessor. Lessee shall be responsible for hazardous waste disposal in accordance with all applicable laws, rules or regulations at Lessee’s expense.

C. **Right of Repair.** Lessor has the right to enter and inspect the Storage Area when deemed necessary. If any improvement falls into a state of disrepair or becomes unsightly, then upon thirty (30) days written notice, Lessor has the right to make repairs, the cost of which shall be paid by the Lessee, which right is cumulative and in addition to other remedies and further, lessor shall have no obligation to make such repairs, except at its own option.

**ARTICLE VI**
TERMINATION

Lessor may terminate this Agreement and Lessee shall promptly vacate the Storage Area in accordance with law upon the happening of any one or more of the following events: (a) The filing by Lessee of a voluntary petition in bankruptcy and a subsequent adjudication of bankruptcy, or the taking of jurisdiction by a court of the assets of the Lessee pursuant to proceedings brought under the provisions of any Federal reorganization act, the appointment of a receiver for Lessee’s assets, or divestiture of Lessee’s rights, powers and privileges under this Agreement by other operations of law; (b) the abandonment or discontinuance by Lessee of the conduct and operation of business at the airport as authorized by this Agreement; (c) the failure by Lessee to keep, perform and observe all of the covenants and conditions herein contained to be kept, performed and observed by Lessee, including but not limited to, the full and prompt payment of all rents and
fees to Lessor with respect to these leased Storage Area, and in this connection it is agreed that since the public convenience and necessity, and the interests and right of the general public are involved in the operation of the Airport, each of the covenants, terms and conditions of this Agreement is of the essence of this Agreement.

**ARTICLE VII**

**INDEMNITY AND INSURANCE**

A. **Indemnity.** Lessee shall indemnify and hold harmless Lessor, its members, agents, officers and employees, against and from all claims, demands and liability for injuries to persons or damage to property occasioned by or in any way arising out of the negligence of Lessee, its agents and employees, or by reason of the violation, disregard or breach of any law, order or regulation by Lessee, its agents and employees, and against and from any claim, demand, or liability in connection or other similar claim arising out of Lessee’s operations under this agreement. Lessee shall give Lessor, and Lessor shall give Lessee, prompt and timely notice of any claims made or service of process in any suit or action concerning any such injuries or damage of which the party giving such notice shall be aware.

B. **Insurance.** Lessee shall maintain liability insurance in a company or companies licensed to do business in South Dakota for the protection of Lessor, naming as additional insures the City of Rapid City and the Rapid City Regional Airport Board, individually and collectively, and its representatives, officers, officials, employees, agents, and volunteers against all claims, losses, costs, expense and liability arising out of injuries to persons and damage to property, resulting from acts of omissions, negligent or otherwise, of Lessee or any employees, agents, patrons, or other persons, growing out of the operation of its business at the Airport. Such policy or policies shall provide for minimum liability in the amount of one million dollars ($1,000,000.00) single limit on account of bodily injury, death, or property damage or other amounts as from time to time required by Lessor’s applicable insurance policies. Lessee shall furnish evidence to Lessor within thirty (30) days from the execution of this agreement, of such policy or policies, which shall contain a provision to insure thirty (30) days’ notice to the Lessor of any change, cancellation or non-renewal of such policy or policies.

C. **Compensation Insurance.** Lessee shall also furnish to the Lessor commercially reasonable satisfactory evidence of Workman’s Compensation insurance in effect.

**ARTICLE VIII**

**GENERAL PROVISIONS**

A. **Notices.** All notices, approvals, requests, consents and other communications given, required or permitted by the terms of this Lease must be in writing and will be deemed to have been duly given when received if hand-delivered, sent by telex, sent by Federal Express service or sent by United States certified or registered mail, addressed as follows:
Lessor:
Airport Executive Director
Rapid City Airport
4550 Terminal Road, Suite 102
Rapid City, South Dakota 57703-8706

Lessee:
Federal Express Corporation
Attn.: Manager, Real Estate (#22-0493)
3680 Hacks Cross Road
Building H, 3rd Floor
Memphis, Tennessee 38125

with a copy to:
Federal Express Corporation
Legal Department
3620 Hacks Cross Road
Building B, 3rd Floor
Memphis, Tennessee 38125
Attn: Managing Director, Real Estate Transactions (#22-0493)

(Or to such other address as Lessor and Lessee may designate from time to time in writing.)

B. **Strict Performance.** The Lessee represents that the terms and conditions of this Agreement have been carefully reviewed, and that Lessee is familiar with the same, and agrees faithfully to comply strictly with them.

C. **Successors and Assigns.** All covenants, stipulations and agreements herein contained shall extend to and be binding upon the legal representatives, successors and assigns of the respective parties.

**ARTICLE IX**
**FEDERALLY MANDATED LEASE CLAUSES**

A. The Lessee, for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease, for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended. (49 CFR Part 21 - DOT Title VI Assurance - AC 150/5100-15A)
B. The Lessee, for himself, his heirs, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that the lessee, shall use the Storage Area in compliance with Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended. (49 CFR Part 21 - DOT Title VI Assurance - AC 150/5100-15A)

C. The Lessee agrees to furnish service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, PROVIDED, that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. (Grant Assurance 22)

D. The Lessee assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the lessee or it transferee for the period during which Federal Assistance is extended to the airport program, except where Federal Assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract. (AAIA of 1982, Section 520 - AC 150/1500-15A)

E. The Lessee agrees that it will practice nondiscrimination in their activities and will provide DBE participation in their leases as required by the sponsor, in order to meet the sponsor’s goals, or required by the FAA in order to obtain an exemption from the prohibition against Long-term leases. (49 CFR Part 23 - AC 150/5100-15A)

F. The Lessee agrees that it shall insert the above five provisions in any lease (agreement, contract, etc.) by which said Lessee (licensee, contractor, etc.) grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Storage Area herein leased or owned. (See the documents referenced for the above clauses)
G. It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended, and the Lessor reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature. (Federal Aviation Act of 1958 Section 308(a) - AC 150/5100-16A)

H. The City of Rapid City reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the Lessee, and without interference or hindrance. (FAA Order 5190.6A - AGL-600)

I. The City of Rapid City reserves the right, but shall not be obligated to the Lessee, to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the Lessee in this regard. (FAA Order 5190.5A - AGL-600)

J. This Agreement shall be subordinate to the provisions of and requirements of any existing or future agreement between the City of Rapid City and the United States, relative to the development, operation, or maintenance of the airport. (FAA Order 5190.6A - AGL-600)

K. The Agreement agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the leased Storage Area, or in the event of any planned modification or alteration of any present or future building or structure situated on the leased Storage Area. (FAA Order 5190.6A - AGL-600)

L. This Agreement and all the provisions hereof shall be subject to whatever right this United States Government now has or in the future may have or acquire affecting the control, operation, regulations, and taking over of said airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency. (Surplus Property Act of 1944 - FAA Order 5190.6A - AGL-600)

ARTICLE X
COMPLIANCE WITH ENVIRONMENTAL LAWS

(a) Throughout the Original Term, Lessor shall fully and punctually comply with all present and future Legal Requirements that are applicable to the Storage Area and that relate to the quality or protection of the environment or the use, storage, handling and disposal of Hazardous Material (as defined below), including, without limitation, the National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321 et seq., the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C.
§1801 et seq., the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §1251 et seq., and the Clean Air Act, 42 U.S.C. §7401 et seq., and all regulations promulgated on the authority of the foregoing (the “Environmental Laws”), except to the extent that Lessee has responsibility for that compliance under the terms of this Agreement. The term "Hazardous Material" means any substance:

(i) the presence of which requires or may later require notification, investigation or remediation under any Environmental Law; or

(ii) that is or becomes defined as a "hazardous waste", "hazardous material", "hazardous substance", "pollutant" or "contaminant" under any Environmental Law, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.) and the associated regulations; or

(iii) that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, any state of the United States, or any political subdivision within any state; or

(iv) the presence of which on the Storage Area causes or threatens to cause a nuisance on the Storage Area or to adjacent properties or poses or threatens to pose a hazard to the Storage Area or to the health or safety of persons on or about the Storage Area; or

(v) that contains gasoline, diesel fuel or other petroleum hydrocarbons or volatile organic compounds; or

(vi) that contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or

(vii) that contains or emits radioactive particles, waves or material, including, without limitation, radon gas.

(b) Intentionally Omitted.

(c) In conducting its activities on the Storage Area, Lessee shall fully and punctually comply, and shall cause the Lessee Parties to fully and punctually comply, with all present and future Environmental Laws, except to the extent that Lessor has responsibility for that compliance
under the terms of this Agreement. In that regard, Lessee must secure all permits and approvals required by virtue of applicable Environmental Laws in order for Lessee to lawfully use the Storage Area. Lessee may not release or discharge, and will not permit any Lessee Party to release or discharge, air emissions, waste, effluent, Hazardous Material or contaminants from the Storage Area in such a manner that the release or discharge will unlawfully pollute or contaminate air, ground (including sub-surface strata), or water (including ground water) or become a public nuisance. Any treatment, testing or control of releases or discharges, including monitoring or mitigation measures, required as a result of Lessee’s operations will be solely Lessee’s responsibility.

(d) Lessee shall defend, indemnify and hold Lessor and its members, constituent partners, directors, officers, agents, employees and contractors harmless from and against all suits, actions, legal or administrative proceedings, demands, claims, liability, fines, penalties, loss, injuries, damages, expenses and costs, including, without limitation, interest and reasonable attorneys’ and paralegals’ fees for attorneys of the indemnitee’s choice, and costs of defense (direct and on appeal), settlement or judgment, (i) that may be incurred or suffered by, or claimed or assessed against, any of the indemnitees under any Environmental Law for, with respect to, or as a direct or indirect result of the presence on, within or beneath the Storage Area or the Stormwater Retention Areas of, or the transportation, handling, management, storage, spill, escape, seepage, leakage, spillage, discharge, emission or release to or from the Storage Area or the Stormwater Retention Areas of, any Hazardous Material that is brought on the Storage Area during the Term in connection with Lessee’s use of the Storage Area and that is in any way connected with any death or injury to any person, any destruction or damage to any property, or any potential or actual impacts, contamination of or adverse effects in the environment. In making the covenant set forth in Article X(c) and the indemnity set forth in this Article X(d), Lessee does not undertake any obligation to remediate, or any liability for the cost of remediating, the Storage Area to a level of contamination lower than that which exists on the Commencement Date or to a level of contamination lower than that which the governmental authorities having jurisdiction over the environmental condition require in order to discontinue enforcement actions. The parties, however, do not intend the foregoing to limit Lessor’s right to seek contribution or cost-sharing under any applicable Environmental Law for costs that any of them may incur in connection with inspections, investigations, studies, design, construction, remediation, or operations or maintenance of remedial activities at, on or near the Storage Area from parties responsible for any contamination occurring at, on, or near the Storage Area.

(e) Notwithstanding the foregoing apparently to the contrary, if any environmental condition encompassed within this Article X and not attributable to or caused by Lessee’s or a Lessee Party’s use and occupancy of the Storage Area is not susceptible to being corrected within 180 days after the date of its discovery or if Lessor fails within 180 days after the date of its discovery to correct a condition that is susceptible to being corrected within that period of time, Lessee may terminate this Agreement by the delivery of written notice to Lessor at least 30 days in advance of the effective date of termination specified in that notice. Further, if the correction of any environmental condition not attributable to Lessee's use and occupancy of the Storage Area partially or totally impairs Lessee's use of the Storage Area, Lessee's obligation to pay Base Rent
and additional rent will abate during the period the corrective activity takes place in proportion to
the diminished utility of the Storage Area in the conduct of Lessee's business.

(f) The indemnities of Lessee contained in this Article X will not extend to loss of
business, lost rentals, diminution in property value, or incidental, indirect or consequential
damages.

(g) The provisions of this Article X will survive the expiration of the Term or the earlier
termination of this Agreement.

Dated this 8th day of February, 2022.

RAPID CITY REGIONAL AIRPORT BOARD

______________________________
Rod Pettigrew, President
Date: _____________________________

ATTEST:

______________________________
Shawn Gab, Secretary

FEDERAL EXPRESS CORPORATION

______________________________
Name: ____________________________
Title: _____________________________
Date: _____________________________

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